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## Vietnam

### Food and Agricultural Import Regulations and Standards

### Intellectual Property Rights on Plant Varieties 2006

**Approved by:**

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**Prepared by:**

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**Report Highlights:**

In November 2005, the Vietnam National Assembly passed a comprehensive intellectual property rights law that consists of six parts. Part four of the law covers intellectual property rights for plant varieties. Included is an unofficial translation of this plant variety section.

The law will be effective from July 1, 2006. However the Vietnam Ministry of Agricultural and Rural Development still has not completed implementing guidelines for the plant varieties' section. Draft guidelines have been sent to the various concerned parties and a final guidelines are promised soon.

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Includes PSD Changes: No  
Includes Trade Matrix: No  
Unscheduled Report  
Hanoi [VM1]  
[VM]

**PART FOUR****RIGHTS FOR THE PLANT VARIETY****Chapter XII: CONDITIONS FOR PROTECTION OF PLANT VARIETIES****Article 157: Organization or Individual who can be protected the rights for plant variety**

1. Organization or Individual who can be protected rights for plant variety are Organizations, Individuals which bred or discovered and developed the plant variety or invested in the task to breed or discover and develop the plant variety or the person to who was transferred the rights over the pant varieties.
2. Organizations, Individuals mentioned in the Provision 1 of this Article include Vietnamese and organizations and individuals of foreign countries which enter into agreements on the protection of plant variety with the Socialist Republic of Vietnam; and foreign organizations and individuals which register a permanent residence in Vietnam or have a business or production establishment of plant variety in Vietnam.

**Article 158. General conditions for plant varieties over which rights are protected**

The plant variety over which rights are to be protected is a variety which is bred or discovered and developed, belonging to the List of species able to be protected by State issued by the Ministry of Agriculture and Rural Development, that variety is new, distinct, uniform, stable and has a proper denomination.

**Article 159. Novelty of the plant variety**

The variety shall be deemed to have novelty if the propagating or harvested material of the variety has not been sold or distributed in other ways for the purpose of exploitation by or with the consent of the holder of the registration right as referred to in Article 164 of this Law in the territory of Vietnam more than one year before the date of the application form is submitted; or outside Vietnam more than six years before the date of application form is submitted for trees or grape and 4 years for other species.

**Article 160. Distinctness of the plant variety**

1. The variety shall be deemed to have distinctiveness if it is clearly distinguishable in one or more major characteristics from any other variety whose existence is common knowledge at the time of filing or on the priority date, as the case may be.
2. The common knowledge varieties as stipulated in paragraph 1 mean the varieties of one of the following cases:
  - a) Propagating materials or harvested products of such variety have been widely used in the market of any country in the world at the time of filing of the registration application;
  - b) The variety has been protected or registered into the List of plant species in any country;
  - c) The plant variety is still the subject of an application for protection or for the List of plant species in any country provided that application form was not refused.
  - d) The plant variety which has had its description published.

**Article 161. Uniformity of the plant variety**

The variety shall be deemed to have uniformity in the propagation if there is the same expression of the relevant phenotype unless the variation is permitted for certain characteristic in its propagation process.

**Article 162. Stability of the plant variety**

The variety shall be deemed to be stable if the relevant phenotypic characteristics of that variety retain the same expression as originally described, and remain unchanged after each propagation crop or propagation cycle, as the case may be.

**Article 163. Denomination of plant variety**

1. The registrant must propose an appropriate name for the plant variety which name must be the same as the denomination registered in any country upon filing of a protection registration application
2. The variety shall be deemed to be properly denominated if it is distinguishable from all other varieties of common knowledge in the same species or similar species.
3. The denominations of plant varieties shall not be considered proper in the following cases:
  - a) Consisting of numerals only, except where such numerals relate to the particularity or the establishment of such plant variety;
  - b) Violating social morality;
  - c) Being liable to misrepresent the feature or characteristics of that variety
  - d) Easy to misunderstand about Breeder's identification.
  - d') Being identical or confusingly similar to a trade mark, trade name or geographical indication already protected before the date of filing of a registration application for protection of such plant variety;
  - e) Being identical or similar to the name of harvested products of such varieties.
  - g) Affecting prior rights of any other organization or individual.
4. Any organization or individual that offers for sale or brings to the market propagating materials of the plant variety must use the name of the plant variety as the name in the Protection Certificate even after the expiry of the protection period stated.
5. When the name of a plant variety is combined with a trademark, a trade name or an indication similar to the name of plant variety already registered for sale or offer in the market, such name must be easily distinctive.

**Chapter XIII: ESTABLISHING THE RIGHTS FOR PLANT VARIETY****Section 1. Establishing the rights for a plant variety****Article 164. Registration of the rights over plant varieties**

1. To obtain protection of the rights over for a new plant variety, organizations and individuals must submit the registration for protection to the State administrative authority of industrial property rights.
2. The organizations and individuals holding the right to register the protection of plant variety (to be referred to as **registrant**) include:

- a) Breeder who directly bred or discovered and developed the variety by their expenses by way of his/her own efforts and expenses.
  - b) Organizations or individuals which invested for the breeder to breed or discover and develop the plant variety by contract unless otherwise agreed.
  - c) Organizations and individuals transferred or inherited the right of registration for Plant variety protection
3. For the plant variety which is bred or discovered and developed by way of using the State's budget or the finance of the project under the State management, the rights over such plant variety will belong to the State. The Government shall make specific provisions for the registration of the right over the plant variety as referred to in this Article.

**Article 165. Submission of the application form for rights over a plant variety.**

1. Vietnamese organizations or individuals or foreign organizations or individuals with a permanent address of residence in Vietnam or with a plant variety business or production establishment in Vietnam may file an application for registration of rights over a plant variety (hereinafter referred to as an **application for protection**) either directly or through its legal representative agency in Vietnam.
2. Foreign organizations and individuals without a permanent address of residence in Vietnam or not having a plant variety business and production establishment in Vietnam may file an application for protection through a lawful representative in Vietnam.

**Article 166. The principles for submitting the first application form for plant variety**

1. In case more than one independent person submits an application for protection on different days, the plant variety protection certificate will be given to the applicant who obtains the earliest valid registration.
2. In case there are many application forms for protection certificate of the same variety submitted in the same day, the plant variety protection certificate will be given to the registrant who is agreed by all the others. If all the registrants could not agree, a plant variety protection certificate will be given by the State management authority of rights over plant varieties to the first breeder who bred or discovered and developed the variety.

**Article 167. Priority principle for the application form.**

1. The registrant may request priority rights in case an application form was submitted within 12 months from the date on which the application form of the same variety has been submitted in a country which and the Socialist Republic of Vietnam both enter into an agreement on plant variety protection. The filing date of the first application shall not be included in this time limit.
2. In order to claim priority, the registrant must specify that claim in the registration application for protection. Within no more than 3 months from submitting the application for protection, the registrant must produce copies of documents as certified by the competent office and samples or other evidence proving that the variety in both application forms is the same and must pay the fees. The registrant must be allowed to supply the information or necessary materials to the State management office of

the rights over plant varieties for examination according to the stipulations in Articles 176 and 178 of this Law after 2 years from the date when the priority ends, or in proper time, depending on the species of the plant variety stated in the application, after the first application form is refused or rejected.

3. If the registration application for protection is entitled to the right of priority, the priority date shall be the date when the first application form was submitted.
4. Within the time limit referred to in clause 1 of this Article, the filing of another application or the publication or use of the plant variety being subject of the first application shall not be regarded as a basis for refusing the registration application for protection which is entitled to priority.

**Article 168. Plant variety Protection Certificate and National Registration Book of protected plant varieties**

1. The contents of a Protection certificate include the name of the variety and species; name of the right holder (hereinafter referred to as the Certificate Holder) and Breeder's name as well as the duration of protection of the right over the plant variety.
2. The state management office of the rights over plant varieties will record the contents of the protection certificate into the National Registration Book for protected plant varieties which is established and kept by the State management office of the plant variety.

**Article 169. The effectiveness of the plant variety protection certificate**

1. The Plant variety protection certificate will apply in the whole territory of Vietnam.
2. The plant variety protection certificate will take effect from the date of the grant of rights for a period of 25 years for trees and grapes; 20 years for other species.
3. The plant variety protection certificate may be cancelled or nullified in accordance with Articles 170 and 171 of this Law.

**Article 170. Cancellation and reinstatement of the effectiveness of plant variety protection certificate**

1. The plant variety protection certificate may be cancelled in one of the following cases:
  - a) The uniformity and stability of the protected variety no longer meets the requirements as at the time of granting the certificate;
  - b) Certificate Holder does not pay the annual fees in accordance with the regulations;
  - c) Certificate Holder does not supply the necessary documents and propagating materials for maintaining as prescribed.
  - d) Certificate Holder does not change the name of the plant variety as requested by the State management office of the rights over plant varieties;
2. For the case stipulated in subparagraph a, c and d paragraph 1 of this Article, the State management office of the rights over plant varieties shall issue a decision for cancellation of the plant variety protection certificate.
3. For the case stipulated in paragraph 1.b of this Article, upon the expiry date of the time limit for payment of annual fee, the State management office of the plant variety shall issue a decision on cancellation of the plant variety protection certificate from the first date of the next effective year in which the annual fees is not paid.

4. For the cases stipulated in clause 1(a) of this Article, any organization and individual shall have the right to request the State management authority of the rights over plant varieties for cancellation the effectiveness of the plant variety protection certificate.

Based on the results of the application to request the cancellation of the plant variety protection certificate and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision to cancel the certificate or to refuse the cancellation of the protection certificate.

5. For the cases stipulated in paragraph 1 this Article, the State management office of the rights over plant varieties shall promulgate the cancellation in a specialized bulletin and specify the reasons for such cancellation and at the same time shall serve a notice to the certificate holder. Within 30 days from the date of publication, the certificate holder has the right to submit a request to the State management office of the rights over plant varieties to explain the reasons why the plant variety protection certificate is cancelled and must pay the fee in order to reinstate the plant variety protection certificate. Within 90 days from the date of filing, the protection certificate holder must solve the reasons for which the certificate was cancelled, with regard to the cases stipulated in subparagraphs b, c and d paragraph 1 of this Article. The State management office of the rights over plant varieties shall then consider reinstating the validity of the protection certificate and making it public in the specialized bulletin.

For the cases stipulated in paragraph 1.a of this Article, the effectiveness of the plant variety protection certificate shall be reinstated if the holder succeeds in proving that the plant variety has met the requirements as to the uniformity and stability and has been so certified by the State management office of the rights over plant varieties.

**Article 171. Nullity of the effectiveness for plant variety protection certificate.**

1. The effectiveness of the plant variety protection certificate will be nullified in the following circumstances:
  - a) The application form belongs to an applicant who does not have the right to file, except where the right over a plant variety has been assigned to the holder of the registration right;
  - b) The protected variety did not meet the conditions for novelty or distinctness at the time of granting the plant variety protection certificate.
  - c) The protected variety did not meet the conditions for uniformity or stability if the plant variety protection certificate is granted on the basis of technical test results which were supplied by the registrant.
2. Any organization or individual can request the state administrative authority of the rights over plant varieties to nullify the plant variety protection certificate during the effectiveness of the plant variety protection certificate.

Based on the results of examining the requirement of the nullity and the opinions of relevant parties, the State management office of the rights over plant varieties shall issue a decision on refusal to annul or shall issue a decision on the nullity the effectiveness of the plant variety protection certificate or to refuse such nullification.

3. In case of the plant variety protection certificate is nullified, all the transactions arising on the basis of the plant variety right are null and void. Such null and void transactions shall be dealt with in accordance with the Civil Law.

**Article 172. Amendment or re-issue of the plant variety protection certificate**

1. The owner of a protection Certificate has the right to request the State management office of the rights over plant varieties to change or rectify any error relating to the name and address of the holder of the protection certificate, provided that prescribed fees and charges must be paid. If such errors are made by the State management office of the rights over plant varieties, this office must rectify such errors and the holder of the protection certificate shall be liable for payment of any fees and charges.
2. The holder of a protection certificate may request the State management office of the rights over plant varieties to re-issue such plant variety protection certificate it is lost or damaged provided that prescribed fees and charges must be paid.

**Article 173. Publishing the decisions related to the protection certificate.**

All the decisions related to the grant, re-issue, cancellation, nullity, amendment the variety protection certificate shall be published by the State management office of the rights over plant varieties in a specialized bulletin within 60 days from date when the decision is issued.

**Section 2. Application form and the procedures for processing registration applications for protection****Article 174. Registration applications for protection**

1. The application for registering the rights for new plant variety protection must include:
  - a) A registration form using the prescribed form;
  - b) Photos and technical questionnaires using the prescribed form;
  - c) Authorization paper if the application form is filed through a representative;
  - d) The documents which demonstrate the registration right if the registrant is a person to whom the right for registering has been transferred;
  - d') Documents to prove the priority in case of claiming for priority.
  - e) The receipt of the fees.
2. A registration application for protection and any transaction documents between the registrant and the State management office of the rights over plant varieties must be made in Vietnamese, except for the following documents which may be made in another language but must be translated into Vietnamese at the request of the State management office of the rights over plant varieties:
  - a) The power of attorney;
  - b) Documents evidencing the registration right;
  - c) Documents evidencing the priority;
  - d) Other documents
3. The documents proving the right of priority for registration of the application form for protection include:

- a) The copy of the application form or the first application form certified by the authorized organization.
- b) The paper of transfer or inheritance of the right for priority if the right is transferred from another person.

**Article 175. Receiving the application form; Submission date**

1. The registration application for protection will be accepted by the State management office of the rights over plant varieties with all documents stipulated in paragraph 1 Article 174 of this Law.
2. The filing date for application form is the date on which the application form is received by the State management office of the rights over plant varieties.

**Article 176. Examining the validity of the application form.**

1. Within 15 days from the filing date, the application form will be examined by the State management office of the rights over plant varieties in order to determine the validity of the application.
2. The registration application for protection shall be regarded as invalid when one of the following cases applies:
  - a) The application form does not follow the requirements;
  - b) The variety in the application form does not belong to a species in the List of protected species;
  - c) The registrant does not have the right for filing including when the registration right belongs to several organizations or individuals where one of them does not agree upon the registration.
3. The State management office of the rights over plant varieties will carry out the procedures as follows:
  - a) To announce the refusal of accepting the application form for the cases stipulated in subparagraph b) and c) paragraph 2 of this Article with the reasons for refusing;
  - b) To inform to the registrant to correct the mistakes for the cases stipulated in subparagraph a paragraph 2 of this Article and to inform the time of 30 days from receipt of the notice for the correction to the registrant;
  - c) To inform the refusal of the application form if the registrant does not correct the mistakes or if the registrant does not have a reasonable appeal against the notice referred to in paragraphs 2.b of this Article;
  - d) To announce acceptance of the application form, requesting the registrant to submit sample of the variety to the organization in charge of the technical test and follow the procedures stipulated in Article 178 of this Law if the application form is valid or if the registrant has corrected mistakes or gave a reasonable response to the notice as stipulated in subparagraph b of this paragraph.

**Article 177. Publication of the application form for protection**

1. If the application form is valid, the State management office of the rights over plant varieties shall publish in the specialized bulletin on plant varieties within 90 days from the date such application is accepted.



2. The contents of publication include: No of application form, date of filing, representative agent (if have), name of registrant, name of owner, variety name, species, the date on which the application form was accepted as valid.

**Article 178. Examining the content of the application form for registering of plant variety protection.**

1. The State management office of the rights over plant varieties shall examine the contents of the application form which is accepted as valid. The examination includes:
  - a) To examine for novelty and the denomination.
  - b) To examine the results of Technical Test of the variety.
2. Technical Test means the conduct of growing tests in order to determine the distinctness, uniformity and stability of the variety.

The technical test shall be carried out by the competent office or organizations or individuals who have enough capacity for conducting the technical test following the stipulations of the Ministry of Agriculture and Rural Development.

The state administrative authority of the rights over plant varieties may use the results of the previous technical test.
3. The time for examining of the test results shall be 90 days from the date of receiving the technical test results.

**Article 179. Modify and supplement the application form**

1. The registrant has the following rights before the state administrative authority of the rights over plant varieties decides to grant or not to grant the plant variety protection certificate or decision of the grant:
  - a) To modify or amend the application form without changing the nature of the registration application for protection;
  - b) To request acknowledging the changes of name and address of the registrant.
  - c) To request acknowledging the changes of the registrant due to transfer the application form under a contract or as a result of inheritance or bequest.
2. The person who requests any of the procedures stipulate at paragraph 1 of this Article must be submit fees and annual fee.

**Article 180. Withdrawing the application form for registration**

1. Before the state administrative authority of the rights over plant varieties decides to grant or refuse to grant the protection certificate, the registrant can withdraw the application form for protection. A request for such withdrawal must be made in writing.
2. From the time which the registrant requests to withdraw the application form for protection, all the next procedures related to the application will be terminated; the fees which have been submitted for the procedures that have not yet been conducted will be refunded following the request from the registrant.

**Article 181. Opinion of the third party for granting the plant variety protection certificate**

From the date of publication of the registration application for protection of plant variety in the professional bulletin until the time a decision for granting a plant variety protection

certificate is made, any third party can send an opinion as about the issue of a plant variety protection certificate to the State management office of the rights over plant varieties. The opinion must be made in writing accompanied by arguments and evidence to support the opinion.

#### **Article 182. Refusal to grant the plant variety protection certificate**

An application form for protection shall be refused for the issue of a plant variety protection certificate in case the variety does not meet any conditions stipulated in Articles 176 and 178 of this Law. In case of refusal, the State management office of the rights over plant varieties shall implement the follow procedures:

1. Announce the proposal to refuse the grant of a Protection Certificate stating the reasons and the deadline for the registrant to amend the shortcomings or appeal against the announcement.
2. Announce the refusal of the grant of protection certificate if the registrant has not amended the shortcomings or have not made an appeal against the announcement stipulated in paragraph 1 of this Article.
3. Implement the procedures stipulated in Article 183 of this Law if the registrant has amended the shortcomings or gives a valid opinion to appeal against the proposal to grant stipulated in paragraph 1 of this Article.

#### **Article 183. Granting plant variety the protection certificate**

If a registration application for protection is not refused as set out in Article 182 of this Law and if the registrant pays the fee, the State management office of the rights over plant varieties shall issue the decision for granting the plant variety protection certificate and record this into the National Registration Book of Protected Plant Varieties.

2. To grant the protection certificate to the applicant.

#### **Article 184. To complain about the issue or refusal to issue plant variety protection certificates**

1. The registrant and any other third party have the right to complain about a decision to grant or the refusal to grant a plant variety protection certificate.
3. Any complaint about decisions to grant or refuse to grant the plant variety protection certificate will be carried out according to the Law on Complaints and Denunciations.

### **CHAPTER XIV: CONTENTS AND LIMITATIONS OF RIGHTS FOR THE PLANT VARIETY**

#### **Section 1. The contents of rights over plant variety**

##### **Article 185. Rights of the Breeder**

The Breeder of a plant variety has following rights:

1. Name of the Breeder will be recorded on the plant variety protection certification and in the National Register Book for protected plant varieties and in all the published documents relating to the plant variety;
2. To get compensation as stipulated in paragraph 1(a) Article 191 of this Law;

##### **Article 186. Rights of the Protection Certificate Holder**

1. The Holder of a protection certificate has the rights to use or permit other persons to use the following rights over the propagating materials of the protected plant variety:
  - a. Production or multiplication;

- b. Processing for the purpose of propagation;
  - c. Offering for sale;
  - d. Selling or other marketing;
  - dd. Exporting;
  - e. Importing;
  - g. Stocking for any of the purposes listed in points a, b, c, d, dd and e of this clause.
2. To prohibit other from using the plant variety in accordance with Article 188 of this Law.
  3. To pass by inheritance or bequest or transfer the rights over the plant variety in accordance with Chapter XV of this Law.

**Article 187. Extension of the rights of the protection certificate holder**

The rights of a protection certificate holder shall be extended to the following plant varieties:

1. Plant varieties that originate from the protected plant variety except where such protected plant varieties themselves originate from another protected plant variety;  
A plant variety is regarded as originating from a protected plant variety if such plant variety has still retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the protected variety except for the differences resulting from actions on the protected variety.
2. Plant varieties which are not clearly different from the protected plant variety;
3. Plant varieties, the production of which requires the repeated use of protected plant varieties.

**Article 188. Acts which infringe the rights over plant varieties**

The following acts shall be considered as infringements upon to the rights of the protection certificate holders:

1. Exploiting or using the rights of the protection certificate holder without his permission.
2. Using a denomination of the variety which is identical or similar to a protected denomination of the plant variety of the same or other similar species.
3. Using the protected plant variety without payment of the compensation amount provided for in Article 189 of this Law.

**Article 189. Temporary rights over for the plant varieties**

1. The temporary rights over a plant variety are the rights of the registrant for protection of the plant variety which arise from the date of publication of the registration application for protection until the date of grant of a plant variety protection certificate. The registrant will not have the temporary right in case the variety protection certificate is not granted.
2. If the registrant is aware of the fact that another person has been exploiting the plant variety for commercial purposes, the registrant has the right to inform that person in writing of the existence of a registration application for protection of the plant variety lodged by the registrant and must specify the date of submission, the date on which

the registration application for protection has been published in order for such another person to terminate the exploitation or continue using it.

3. The user of the variety must pay an amount equivalent to the value of transfer of the right to use such variety within an appropriate scope and using time in case the announcement has been informed as stipulated in Paragraph 2 of this Article and the user continues using.

## **Section 2. Limitations of rights over plant varieties**

### **Article 190. Limitations to the right of a plant variety protection certificate holder**

1. The following acts are not considered as infringements of the rights over a protected plant variety:
  - a. Using the variety privately for non-commercial purposes;
  - b. Using the variety for breeding and for scientific research purpose;
  - c. Using the variety to create new plant varieties distinctive from the protected plant varieties;
  - d. Production households may use the harvested products of the protected variety for propagation and cultivation in the next season in their own field.
2. Rights over a plant variety shall not be extended to the acts related to any materials of the protected variety which have been sold or otherwise taken out of the Vietnamese or overseas market by the breeder or his or her nominee, except for the following acts:
  - a) Relate to the continuous propagation of such a plant variety;
  - b) Relate to the export of propagating materials of such plant variety to a country where the genus or species are not protected except where such materials are exported for consumption purpose only;

### **Article 191. Obligations of the Holders and Breeder**

1. The Holder of the protection certificate has the following obligations:
  - a) To pay compensation to the breeder as agreed between them, in the absence of such agreement, the compensation must be paid following the stipulations of the Law.
  - b) To pay fees for the plant variety protection certificate according to the stipulation.
  - c) To preserve the protected variety and to supply propagating material of the protected variety to the state administrative authority of the rights over plant varieties and to maintain the stability of the protected variety as the stipulations.
2. The Breeder of the variety has the obligation to help the protection certificate holder to maintain the propagating material of protected variety.

## **Chapter XV: TRANSFER OF THE RIGHTS TO A PLANT VARIETY**

### **Article 192. Transfer the rights to use of the plant variety**

1. Licensing for use of a plant variety means the permission of the Holder of the plant variety given to another person to conduct one or some acts of his right to use the plant variety.

2. The licensing for use of a plant variety shall be consented by all holders in case the right falls under co-ownership.
3. The licensing for use of a plant variety shall be conducted in the form of a written contract.
4. A licensing contract for use of a plant variety shall not have such provisions that unreasonably restricts the right of the licensee, particularly those provisions neither deriving from, nor aimed at protecting of, the rights of the licensor to the plant variety.

**Article 193. The rights of the parties in licensing contract**

1. The licensor shall have the rights to permit or not permit the licensee to assign the license for use to a third party;
2. The licensee shall have the following rights:
  - a) To assign the license for use to a third party if it is agreed by the licensor;
  - b) To request to the licensor to carry out necessary measures against any infringements by a third party causing damage to the licensee.
  - c) To carry out necessary measures to prevent a third party infringements if within a time limit of 3 months from the date of the request, the licensor fails acts as requested the in accordance with sub paragraph b of this clause.

**Article 194. Assignment of the rights for plant variety**

1. To assign the rights for a plant variety means that the holder of the plant variety transfers all the rights of such plant variety to the assignee. The assignee shall become the owner of the plant variety Protection Certificate from the date for registration of the assignment contract with the state administrative authority of the rights over plant varieties in accordance with the prescribed procedures.
2. Where the right of a plant variety is under co-ownership, the assignment of such rights must be consented by all owners.
3. The assignment of the ownership rights to a plant variety must be made in a written contract.

**Article 195. Bases and conditions for compulsory licensing for use of the plant variety**

1. In the following cases, the right to use a plant variety shall be licensed to another organization or individuals under a decision of the state competent authority as referred to in Article 196.1 of this Law without having to obtain permission from the protection certificate holder or his nominee (to be referred to as the **holder of the exclusive right to use the pant variety**):
  - a) The use of such plant variety is for the public interest, for non-commercial purpose, to satisfy the needs of national defense, national security, disease prevention, treatment and nutrition for people or to meet other social urgent needs;
  - b) The person having a demand and capacity to use the plant variety fails to reach an agreement with the holder of the exclusive right to use the plant variety upon entering into a licensing contract although best efforts have been made for a

reasonable period of time to negotiate the price rate and other commercial conditions.

- c) The holder of the exclusive right to use the plant variety is regarded as conducting an act of constraint of competition under the competition legislation.
2. The holder of the exclusive right to use the plant variety has the right to terminate the right has the right to request for termination of such right of use when the bases of compulsory licensing provided for in clause 1 of this Article cease to exist and are unlikely to recur, provided that such termination shall not prejudicial to the licensee.
3. The right to use a plant variety shall be transferred under a decision of a state competent authority in compliance with the following conditions:
  - a) Such right of use is non-exclusive;
  - b) Such right of use shall only be limited to such a scope and period sufficient to attain the objectives of the compulsory licensing, and predominantly for the supply of the domestic market, except for the cases referred to in clause 1(c) of this Article;
  - c) The licensee shall not assign such right of use to another person, except with the assignment of his or her business premise, or not grant a sub-license to others;
  - d) The licensee must pay an adequate compensation to the holder of exclusive right to use the plant variety taking into account the economic value of such right of use in each specific case, in compliance with the remuneration frame provided for by the Government;
4. The Government shall make specific provisions for the cases of compulsory licensing of the right to use plant varieties and the compensation frame as referred to in Article 3(d) of this Article.

**Article 196. Power and procedures for licensing the right to use plant varieties under compulsory decisions**

1. The Ministry of Agriculture and Rural Development shall issue decisions on licensing the right to use a plant variety in the fields under the scope of its State administration on the basis of a relevant request in the cases set out in Article 195.1 of this Law.  
Ministries, ministerial-level agencies shall issue decisions to license the right to use plant varieties in the fields under the scope of its State administration on the basis of consultation with the Ministry of Agriculture and Rural Development in the cases referred to in Article 195.1 of this Law
2. A licensing decision must fix the scope and conditions of such use in accordance with Article 195.3 of this Law.
3. The State competent authority that makes a decision on licensing the right to use a plant variety must notify this decision to the holder of the exclusive right to use such plant variety.
4. A decision on licensing the right to use a plant variety or refusal to license the right to use a plant variety may be complained about or subject to a lawsuit in accordance with the law.

5. The Government shall make specific provisions for procedures for licensing of the right to use a plant variety as referred to in this Article.

**Article 197. Rights of Protection Certificate holders in case of compulsory licensing**

The protection certificate holder being subject of compulsorily licensing of the right to use a plant variety shall have the following rights:

1. To receive an adequate compensation corresponding to the economic value of such right of use or equivalent to the price of contractual licensing of such right with similar scope and term;
2. To request the state administrative authority of the rights over plant varieties to amend, cancel or nullified the validity of the compulsory license when the conditions resulting in such compulsory licensing no longer exist or if such amendment, cancellation or nullity does not cause damages to the compulsory licensee.